



## CULBERTSON, ADAMS & ASSOCIATES, INC.

February 12016

County of Santa Barbara  
Ad Hoc Subcommittee Regarding Santa Ynez Valley  
Band of Chumash Indian Matters  
c/o Mona Miyasato, County Executive Office  
105 E. Anapamu  
Santa Barbara, CA 93101

SUBJECT: Transmittal of Comments on December 10, 2015 County  
Proposed term Sheet and January 14, 2016 Santa Ynez Band of  
Chumash Indians ("Band") Response

Dear Ms. Miyasato:

I am writing to register my comments on the above referenced documents. I am unable to attend the February 11, 2016 meeting of the Ad Hoc Committee due to a scheduling conflict. I ask that my comments be taken into consideration, posted on the website for public inspection, and that the Summary be read into the record. Ms. Terri Maus-Nisich has been gracious enough to offer to read that portion into the record.

### **Summary**

The Ad Hoc Committee and the County should not in any way condone Fee to Trust (FTT) on any property owned by the Band. There is no logical reason for this approach in the absence of a proposal by the Band to amend the Santa Ynez Community Plan, or for the County to initiate an amendment to the Plan, to address the land use regulatory changes desired by the Band. This is the stated position of the Board of Supervisors on Camp 4 as established by Board action on a 4:1 vote on October 15, 2013. Nothing in the Board action of August 25, 2015 changes this position. In fact, the Board's action last August is consistent with the October 15, 2013 action. Specifically, the Board only extended authority to the Ad Hoc Committee to negotiate Fee to Trust on the Mooney/Escobar applications. Since the Board chose to be that specific with respect to those properties, and not extend that





authority to Camp 4, the FTT discussions are completely inappropriate without a return to the Board to reconsider their October 15, 2013 position in a full public hearing. This is especially important in a time of scarce County resources, where a great deal of time and money is being spent to pursue this Ad Hoc Committee approach.

### **Background**

The County's proposed term sheet was released to the public just days before the December 10, 2015 Ad Hoc Committee meeting, giving little time for the public to digest its contents and prepare for public remarks. Notwithstanding this fact, at least two members of the public testified against the FTT approach, noting that the term sheet invited that result if an agreement was reached.

On January 14, 2016, minutes before the Ad Hoc Committee meeting began, the Band submitted their response to the Term Sheet, again without regard to the public's ability to digest and respond. Nonetheless, the public forcefully testified against any FTT approach.

Finally, the all-important waiver of sovereign immunity language has not been shared with the public at all. Private discussions between the County Counsel's office and the Band are not available to the public. This critical dimension should not be hidden from view.

### **The County's Proposed Term Sheet is in Violation of the Board's Prior Actions and the Public was not afforded an Adequate Opportunity to Review the Idea of FTT in Advance of a Presentation to the Band**

Nothing in the Board's action of August 25, 2015 authorized the Subcommittee to extend an offer of FTT to the Band if an acceptable agreement was reached, whether on Camp 4 as a whole or on any portion of Camp 4. In fact, the County's proposed term sheet did not even need to raise the issue of FTT and the involvement of the Secretary of the Interior. The County's terms could have been discussed and the Band's reaction considered without indicating that the County Ad Hoc Committee was open to the idea of FTT, contrary to past Board positions. The fact that the Board members participating on the Ad Hoc Committee have decided to devote considerable taxpayer resources to an avenue the Board has consistently rejected is a violation of the public trust.

The Board members seemed taken aback on January 14 at the reaction of the public to the FTT discussions, including my testimony. The surprise registered by the Board members who participated in the Ad Hoc Committee on January 14, 2016 is not justified. The opposition of the community to FTT is open and well established.





The public received no advance notice of the Board members' intention to pursue this avenue and had to testify with little notice or context on the term sheet contents during the holidays. Importantly, the County's proposed term sheet specifically proposes to support FTT by application or Congressional action, completely contrary to the prior position of the Board as a whole.

The dismissive attitude of the Board members towards the public is also disturbing. Every participant on the Ad Hoc Committee and its staff is compensated, but the public volunteers their time. The public, therefore, should have been alerted that the County was considering a step towards FTT rather than a late transmittal of a term sheet containing that notion. Such a move is akin to "finding the rabbit in the picture". Even the Band stated that it did not have time to devote to a review and response.

The Board's consistent position has been to oppose FTT, not only evidenced by the October 15, 2013 action but by its own position as expressed to the Bureau of Indian Affairs through input, appeals and litigation. While the Ad Hoc Committee Board participants may think that the Board gave them plenary authority to discuss any and all approaches, that conclusion is not supported by the record of the Board and the actions of the Board opposing FTT. The Board's authorization was very specific – FTT could be discussed in relation to Mooney Escobar, not Camp 4.

Simply stated, if the Board members of the Ad Hoc Committee were going to take the step of support for FTT, they should have returned to the Board for such authorization.

**A reasonable solution to this standoff would be for the County to initiate an Amendment to the Santa Ynez Community Plan for the 194 acres that includes Residential Housing and a Tribal Center.**

The County Board of Supervisors continues to protract the debate regarding land uses on the Camp 4 property by refusing to initiate and streamline an amendment to the Community Plan. It is clear that the Ad Hoc Committee Board members **want** to streamline the process – they say so in the County term sheet. It is legally possible for the Board to initiate this amendment and direct the County Executive Officer to process that amendment in the minimum legal timeframes. In fact, now that the Board has raised an opportunity on the 356 acres, that amendment could be performed at the same time. The County can continue to pursue amendments as needs change and use that well-established process as the dialogue. As the County has noted many times, the Band does not need to take property into trust to pursue housing and tribal center objectives. But the County Board has to smooth the way and motivate itself to act in an appropriate manner and timeframe.





## **Comments on the County's Proposed Term Sheet**

While I do not agree with the County's FTT approach, nor Supervisor Adam's statement that "we are trying to draft an agreement Congress can adopt", I offer comments on the term sheet and the Band's response in order to be complete, and lest the Committee develop the impression that there is no opposition.

**1. Waiver of Sovereign Immunity** - The County's proposed term sheet omits important waiver language that should be presented to the public for consideration.

**2. Term** - (a) Makes the agreement coterminous with an existing *or future* gaming compact. The State has just approved a new compact prohibiting gaming on Camp 4 or any other property owned by the Band except the current "reservation". This provision suggests that the County is open to more gaming. Moreover, if an amendment to the State compact to allow gaming in any other manner is proposed, the County should have the right to cancel any agreement with the Band.

(b) This provision is too open ended. What are the topical areas of discussion? What are the parameters?

**3. Municipal Finance/Fiscal Considerations** - (e) includes the notion of Transient Occupancy Tax (TOT) although no such facility is proposed. If the County is seeking this tax in connection with such rental entities like Air BNB, the County should first ascertain if rental or sale of housing to non-tribal members is even permitted. Otherwise, the reference to TOT should be removed. Would the sale of a home to a non-Chumash continue to pay no property tax?

**4. Mitigation non-economic impacts priority items** - (e) The restriction on special events being limited to Tribal members is too restrictive. The Band now holds a variety of events that the public attends. There is no reason to restrict members of the public allowed to attend an event at the Tribal Center. If the concern is congestion or noise, then the County can propose restrictions on that basis.

**5. Future Land Use Limits** - (a) The County should allow for termination - as opposed to non-renewal - to be discussed. However, the termination must be in accordance with State legislation and no allowance to avoid the accelerated property tax payment should be made.

(d) as noted in previous comments, this should not be a FTT discussion.

**6. Infrastructure and service supports** - No comments.

**7. Other items for consideration** - No comments.





## **Comments on the Band's Response to the County's Proposed Term Sheet**

The review of the Band's response is made more difficult by the lack of written detail, as many aspects of the term sheet were simply verbally presented. Therefore, these comments will be directed at both the written materials and verbal comments made by the Band.

**First Preamble:** As I testified at the Ad Hoc Committee on January 14, 2016, a simple lot line adjustment is capable of arranging the five lots in a way that encompasses the areas of residential and the tribal center, which can each be one lot. This is a common strategy used in many jurisdictions and even on large landholdings.

**Second Preamble:** Under no circumstances should the County *advocate* for FTT which it has consistently opposed. Moreover, the very fact that an Act of Congress is mentioned suggests that these negotiations are not being pursued in good faith by the Band. The BIA process was flawed and the County and others have litigated. This preamble should be rejected.

**1. Waiver of sovereign immunity** – Reference my comments with respect to this issue on the County term sheet.

**2. Term** – The response does not address any details,

**3. Municipal Finance** – (b) The Band's written response, together with comments made by the Band and its representative at the meeting, seem to suggest that the Band wishes to be treated as if it were a city by withholding about 13% from the property tax to fund its own services. Presumably this cost is predicated on the Band's fire, law enforcement and permit services. If in fact those services are actually provided and the retained amount reflects the cost for those services, then this may not be completely objectionable. However, what must be included if the Band *cannot* provide those services, or provides them inadequately, that the County must be reimbursed. This is common in Mutual Aid agreements between cities and counties.

(c) This provision is not explained. Inasmuch as the County and the Band are discussing a FTT agreement, there are no lands taxed in any event. But it is not clear what is meant by tribal/government lands.

(d) Property taxes on residences should not be assessed until the residence is occupied, as is the case with any residence. If this is what is meant by the Band's statement, there should be no problem.





(e) Sales taxes and TOT are retained by cities or paid to the state and returned through a disbursement. This is not a City if this land goes into trust and should not be treated as one. However, there may be language that can be developed to be fair and even-handed on the costs. For example, not collecting sales tax creates a deficit for those services that sales taxes fund. To the extent that the Band provides those services, an offset could be considered.

**4. Mitigation -**

(b) This comment seems to suggest that somehow County approved septic systems should be eliminated to benefit downstream properties such as Camp 4. Of course, the Band bought Camp 4 knowing those systems were in existence. There is no justification to cause the County to “enforce” against persons who are in good standing with respect to the applicable laws.

**5. Future Land Use Limits -** (a) and (i) If the agricultural preserve contract is terminated by mutual agreement of the Band and the County, there should be no relief from taxes and penalties. There are sound public policy reasons for the accelerated taxes and penalties. There is significant value to the Band to move ahead immediately and that value is answered in State law by the payment of taxes and penalties.

(b) Gaming is not permitted on Camp 4 due to the State compact. Gaming was also prohibited in HR 1157. If the term of this agreement is the same as the State compact there is no reason to discuss gaming at all.


**6. Infrastructure and service supports -** No comments.

**7. Other items for consideration -** There is no explanation of the Band’s position with respect to this issue, and the language is the same as proposed by the County.

**Conclusion**

The County should abandon all work towards FTT and instead assist the Band with a comprehensive plan to address an amendment to the Santa Ynez Community Plan. The County should not delay or belabor issues but rather bring forward a Specific Plan on all of the Band’s properties. In this way, the Band receives its reasonable return on investment and the community and the County avoid the cost and possible negative effects of a fee to trust process that is nothing like what was envisioned in 1934.

Sincerely,

  
M. Andriette Culbertson